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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,006	02/07/2002	Lewis M. Fetterman	701-01	8858
7590	04/19/2004			
Robert Rosenthal Suite 200 5856 Faringdon Place Raleigh, NC 27609			EXAMINER BARRY, CHESTER T	
			ART UNIT	PAPER NUMBER
			1724	
DATE MAILED: 04/19/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Office Action Summary	Application No. 10/071,006	Applicant(s) FETTERMAN ET AL.	
	Examiner Chester T. Barry	Art Unit 1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 2/17/04
- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 6-12 is/are rejected. 17, 18, 20
- 7) ☒ Claim(s) 13-14 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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Claims 6 – 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As noted previously, it is unclear by what standard of performance the soil amendment is judged to be “improved” with respect to nutrient bioavailability. This rejection may be overcome by deleting “characterized by improved nutrient bioavailability.” This is not a “new” rejection because applicant was given fair notice of the examiner’s position with respect to the phrase “improved nutrient bioavailability” in the rejection under this same statutory subsection at page 5 of the last Office action (see rejection of claim 19).

Claims 17 – 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This claim is directed to a product limited by the “whereby” clause,¹ and made by a particular process, namely, the process which **consists** of three steps: The composting step, the coir fiber mixing step, and the sand mixing step. The confusion arises in claim 18. Claim 18, while still directed to the media product, is said to be made by the process of claim 17 “further including” an additional step, i.e., the clay adding step. How can this be? The process of claim 17 employed “consists of” language, which is “closed” claim drafting language. That is, a media product meeting the “whereby” limitation of claim 17 would NOT meet the process step-derived limitations of claim 17 if that product were made by any process

¹ Whereby “a stabilized soilless media is formed that is substantially free of pathogens.”

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including any "basic and novel characteristic"-affecting step. Just such a step is recited in claim 18.

Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 20 is directed to a media made by "the process according to claim 11." The confusion arises in the fact that claim 11 is directed to a media product, not to a process.

Claims 6 – 9, 11 – 12 are rejected under 35 USC Sec. 103(a) as obvious over JP 62-99353 in view of USP 5906436 to Cole and USP 5741344 to Warkentin.

JP 62-99353 describes a process of producing a soil amendment comprising blending swine solids with sawdust to form a swine solids mix, i.e., a "raw material," composting the swine solid mix in two fermentation stages lasting a total of 30 - 45 days,² i.e., about 4 – 6 weeks, followed by curing during a final fermentation period lasting about 6 months. The reference does not teach stopping the final curing stage after about 6 weeks.

USP 5906436 to Cole teaches that curing time is a known result-effective variable in composting. See col 1 line 11. It would have been obvious to have varied the curing times, including the final curing stage taught by the Japanese reference, i.e., various times less than 6 months and longer than 6 months, in order to optimize the

² First fermentation of 10 – 15 days followed by second fermentation of 20 - 30 days.

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composting process to arrive at "a stabilized product." Shorter – rather than longer curing times – would have been especially desired because less production time means higher productivity. Similarly, it would have been obvious to have optimized the "moisture content" because Cole teaches that this is a key parameter of composted products. See col 1 line 18. Similarly, it would have been obvious to have optimized the "carbon-nitrogen mass ratio" because Cole teaches that this is a key parameter of composted products. See col 1 line 18. USP 5741344 to Warkentin describes adding water to control moisture see col 2 line 52.

Claim 10 is rejected under 35 USC Sec. 103(a) as obvious over JP 62-99353 in view of USP 5906436 to Cole and USP 5741344 to Warkentin as applied above, further in view of HOFSTEDE. HOFSTEDE suggest adding clay to composting mixture to immobilize contaminants. It would have been obvious to have added an effective amount of clay to the composting mixture of JP 62-99353, as modified by one or more of Cole and Warkentin, in order to immobilize contaminants therein, as suggested by HOFSTEDE (AU 9222081 A published 3/11/93).

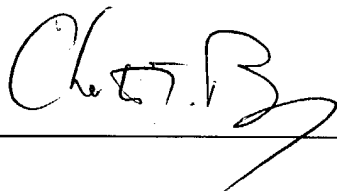
13-16,
Claims ~~13-16~~ 19 are objected to as being dependent on a rejected base claim, but is allowable over prior art.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Specifically, applicant's new limitation with regard to the sequentiality

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of the composting and curing steps. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



CHESTERT. BARRY
PRIMARY EXAMINER

591-272-1152